

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 27 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

VELJIBHAI SHAMJIBHAI

Appearance:

MR DN PATEL, ADDL. PUBLIC PROSECUTOR for Appellant
NOTICE SERVED for Respondent No. 1, 5

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 20/08/98

ORAL JUDGEMENT

The State has preferred this appeal against the order of acquittal recorded by Judicial Magistrate First Class, Dhroal in Criminal Case No. 99 of 1986. Accused were tried for an offence punishable under section 7 read with section 16 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act.)

2. While admitting this appeal on 6.9.1989, the

Court admitted the appeal only qua respondent No.1 and the appeal was dismissed qua respondents No.2 to 4.

3. Succinctly stated, the facts as it emerges from the record are as under:-

Respondent No.1-original accused No.1 appears to be a vendor whose shop was visited by Food Inspector respondent No.5 on 4.5.1985 for collecting sample of Asafoetida. He kept Natwarlal Mohanlal as a panch witness, and after explaining to the Panch, sample was collected from the vendor, respondent No.1. In the shop of the vendor, small sealed packets of "Deer Brand" (Haran Chhap) containing Asafoetida were found. There were other packets of other brands as well. The Food Inspector collected samples from 12 packed packets (small tins). All the 12 packets revealed the name of respondent No.4 as manufacturer. There were other details also on the packet which are mentioned in the panchnama. From all the 12 tins, sample were taken out in a net, clean and dry paper. Thereafter the samples were divided into three equal parts and the samples were sealed in accordance with the rules. One sample was forwarded to the Public Analyst and two samples were forwarded to Local Health Authority. Original bill was also produced by the vendor before the Food Inspector and xerox copy of the same has been produced on record. On analysis of the sample, the same was found to be adulterated and the Public Analyst forwarded its report to the Food Inspector. Thereafter, consent was obtained, and after following the procedure laid down under the Act and the Rules, complaint was filed against the vendor Veljibhai Shamjibhai. Two other persons were also joined as co-accused No.2 and 3, in the capacity of partners of accused No.4 manufacturer of the sample in question. The trial Court, without giving proper weight to the evidence, acquitted all the accused. The trial Court has not given any positive finding about the non-compliance of the rules or a particular provision, but in paragraph 6 of the judgment, the trial Court has reproduced certain submissions made on behalf of the accused persons, and has held that in view of the circumstances narrated in paragraph 6, the accused cannot be held guilty. The approach of the trial Court is not proper. The Court was required to appreciate evidence and to give its finding positively on all points.

4. The Apex Court in the case of BABULAL VS. STATE OF GUJARAT reported in AIR 1971 SC 1277 has held that "Food Inspector is not an accomplice". If the evidence of the Food Inspector is corroborated, and if the

evidence inspires confidence, there is no reason why not to accept the same. In the instant case, the prosecution has led sufficient evidence, but without giving positive finding, the Court has acquitted the accused.

5. The evidence clearly suggest that from the vendor sample of Asafoetida was collected from sealed containers, and the same was divided into three equal parts in accordance with the Rules. All the parts were sealed in accordance with the rules. Panchnama Exh. 33 clearly reveals that the samples were collected from sealed containers. Evidence of the Food Inspector is also convincing on this point. Panch Natwarlal was examined as a prosecution witness, vide Exh.56, and he has admitted his signature. From the evidence on record, it is clear that the accused are guilty of the offence for which they were tried.

6. In the instant case, during the trial, the respondent No.1 came out with a case that due procedure was not followed at the time of taking the samples. It is the prosecution case that the samples were collected from sealed containers. At the cost of repetition, it is required to be noted that the panchnama points out the same thing. So far as the cross-examination of Food Inspector is concerned, in paragraph 2 he has stated that he took the samples from packed tins. In the cross examination on behalf of the accused No.2 to 4 it is suggested that the containers from which the samples were collected did not bear 'sealing wax' or string. The manufacturer is not expected to distribute the containers for sale applying sealing wax and string on the containers. The manufacturer is expected to supply the material in sealed containers, and nothing more. Merely because no sealing wax was applied by the manufacturer, it cannot be said that the containers were not in sealed condition. Therefore, there was no merit in this suggestion put forth by the original accused No. 2 to 4.

7. In this case the finding is that the samples were collected from sealed containers or packets; the vendor has produced a warranty i.e. a bill, and has satisfactorily established his defence of warranty. He must, therefore, get the benefit of the defence. Therefore, the vendor cannot be held guilty for the offence for which he was charged.

8. So far as the appeal against the remaining accused, i.e. the manufacturer and its partners is concerned, appeal against them has been dismissed at the admission stage. Nothing is therefore required to be

said regarding the accused who manufactured the goods and supplied to the vendor.

9. In the result, this appeal against the vendor, accused No.1 fails. The appeal is accordingly dismissed.
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